



CTIA

Building The Wireless Future™
Cellular Telecommunications Industry Association

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December 10, 1999

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, SW
12th Street Lobby, TW-A325
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: Ex Parte Presentation
WT Docket 99-168**

Dear Ms. Salas:

On December 9, 1999, the Cellular Telecommunications Industry Association ("CTIA") represented by Brian Fontes, Senior Vice President for Regulatory Policy and Administration and Phil Verveer of Willkie Farr & Gallagher met with Adam Krinsky, Legal Advisor to Commissioner Gloria Tristani, to discuss service rules for the 746 – 764 and 776 – 794 MHz Bands (Channels 60 – 69).

Additionally the Cellular Telecommunications Industry Association ("CTIA") represented by Brian Fontes, Senior Vice President for Regulatory Policy and Administration and Phil Verveer of Willkie Farr & Gallagher met with Bryan Tramont, Legal Advisor, Wireless and International Matters, to discuss service rules for the 746 – 764 and 776 – 794 MHz Bands (Channels 60 – 69).

Finally, on December 9, 1999, the Cellular Telecommunications Industry Association ("CTIA") represented by Brian Fontes, Senior Vice President for Regulatory Policy and Administration and Phil Verveer of Willkie Farr & Gallagher met with Christopher J. Wright, General Counsel, Joel Kaufman, Deputy Associate General Counsel and Deputy Division Chief and Jane Halpern, General Counsels Office to discuss service rules for the 746 – 764 and 776 – 794 MHz Bands (Channels 60 – 69).

The substance of CTIA's presentation in the three meetings is set forth in the attached document.

Pursuant to Section 1.1206 of the Commission's Rules, an original and one copy of this letter and its attachments are being filed with your office. If you have any questions concerning this submission, please contact the undersigned.

Sincerely,

Dustun L. Ashton

Attachments (1)

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CTIA *Ex Parte* Presentation

Service Rules for the 746-764 and 776-794 MHz Bands (Channels 60-69); WT Docket No. 99-168

Pursuant to a Congressional mandate, the FCC has reallocated 60 MHz of spectrum in the television broadcast band (channels 60-69) for both public safety and commercial use. Moreover, Congress has required the Commission to complete the auction and licensing of this spectrum in the current fiscal year. To meet this deadline, the Commission immediately must determine the band plan for the 36 MHz of spectrum designated for commercial use; must determine the geographic scope of the license areas; must determine the permissible use(s) of the bands, the eligibility requirements, the service classification, license term, and, finally, the auction rules.

On December 6, 1999, CTIA's Executive Committee adopted the following principles to assist the Commission in developing develop service rules for this spectrum:

1. CTIA supports a band plan that allows for three spectrum blocks of sufficient capacity for Third Generation CMRS service;
2. CTIA supports regional geographic license areas;
3. CTIA supports rules that permit licensees to aggregate licenses within and across markets without limitation;
4. CTIA supports rules that do not apply the CMRS spectrum caps to this spectrum;
5. CTIA supports rules that authorize CMRS services in this spectrum;
6. CTIA supports rules that will facilitate vacating incumbent users from these bands well before the 2006 deadline; and
7. CTIA opposes designation of any part of this spectrum for non-commercial use: any such designation would be inconsistent with the Congressional mandate.

Three Spectrum Blocks of Sufficient Capacity for Third Generation CMRS Service

Historically, the FCC has developed band plans that provide for wireless competition (*i.e.*, at least two or more licensees per geographic area). The Commission should not foreclose the opportunity for such competition to develop in this band. Moreover, by creating more bands, the Commission creates an opportunity for more, rather than fewer competitors. The wireless industry's technical experts agree that the 36 MHz of spectrum in this band is sufficient for three blocks of sufficient capacity for Third Generation CMRS service. As noted below, CTIA supports rules that permit licensees to aggregate licenses within and across markets without limitation. By providing smaller building blocks, the Commission can best harness market forces and permit bidders to aggregate both spectrum and geographic licenses up to the most economically efficient license size.

Regional License Areas

Reflecting industry consolidation, the Commission has moved from smaller service areas, *e.g.*, the cellular MSA's and RSA's, towards larger service areas, such as the BTAs and MTAs adopted for wideband PCS. As a result of the PCS licensing scheme, carriers with national footprints have emerged and the CMRS industry is experiencing consolidation as carriers seek to expand their coverage area and capture scale economies. Adopting Regional Economic Area Groupings (REAG) license areas will permit additional incumbent CMRS carriers to fill out their geographic footprints, and enhance competition. Here too, by providing smaller geographic building blocks, the Commission can best harness market forces and permit bidders to aggregate licenses up to the most economically efficient license size.

The CMRS Spectrum Caps Must Not Apply

The Commission just revisited the CMRS Spectrum Cap and determined that the cellular and PCS CMRS spectrum caps should not apply to new spectrum. By licensing additional CMRS spectrum, the Commission creates additional capacity and permits entry by new service providers. Moreover, to the extent that new Third Generation CMRS services are provided in the new band, sound competition policy should consider the new services to be in a different market from traditional cellular and PCS CMRS service. By not applying the CMRS spectrum caps, the Commission will permit more bidders and a more efficient auction outcome without harming competition..

CMRS Service Rules Should Apply

A cornerstone of the FCC's regulatory policy for mobile services has been to uniformly apply CMRS rules to CMRS like-services. Indeed, the intent of Congress in amending Section 332 of the Communications Act in 1993 was to establish a broad category of "commercial mobile services" and apply uniform rules to similar wireless services. To avoid disparate regulatory treatment of like services, the Commission should allow licensees in this band to declare the type of service they will offer (*i.e.*, fixed wireless or mobile wireless), and have the appropriate rules apply.

Incumbent Users Should Vacate These Bands Before 2006

The current rules permit incumbent broadcasters to retain their licenses through 2006, and under certain circumstances, beyond. To encourage the rapid development and build out of Third Generation CMRS services, the Commission must provide incentives to incumbents to vacate these bands immediately.

Designation of Any Portion of this Band for Non-Commercial Use Is Inconsistent with the Congressional Mandate

Congress clearly instructed the Commission to license 36 MHz of this band for commercial use. Designation of any portion of this band for non-commercial use, *i.e.*, private radio, is inconsistent with the Congressional mandate. CTIA believes that the reference to "commercial use" in Section 337 of the Communications Act precludes adoption of a band plan that would directly or indirectly reserve a portion of the spectrum for private wireless users. In the context of spectrum allocation, "commercial" is a term of art distinct from "private" and the Conference Report demonstrates that Congress appreciated this distinction in passing the Balanced Budget Act of 1997.